

**COMMONWEALTH OF KENTUCKY  
PUBLIC PROTECTION CABINET  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF SECURITIES  
AGENCY CASE NO. 2009-AH- 73**

**IN THE MATTER OF:  
AMERIPRISE FINANCIAL SERVICES, INC.**

**SETTLEMENT AGREEMENT & ORDER**

**BACKGROUND**

1. The Department of Financial Institutions ("DFI"), Division of Securities (the "Division") is the agency of Kentucky state government charged with enforcement of the provisions of KRS Chapter 292 (the "Kentucky Securities Act") and the rules and regulations enacted thereunder.
2. Ameriprise Financial Services, Inc., formerly known as American Express Financial Advisors, Inc. ("Ameriprise"), is a registered broker/dealer, which is also registered as such in Kentucky with the DFI. Ameriprise maintains its principal offices at 50611 Ameriprise Financial Center, Minneapolis, MN 55474. Ameriprise is doing business in the Commonwealth of Kentucky through its agents and representatives.
3. Brian W. Livingston ("Brian Livingston") is a Kentucky resident. Prior to February, 2007, Brian Livingston was employed as a registered representative and investment adviser representative for Ameriprise with offices located at Suite 2B, 2610 Gleeson Lane, Louisville, KY 40299.
4. Michael A. Livingston ("Michael Livingston") is a Kentucky resident. Prior to October, 2008, Michael Livingston was employed as a registered representative for Ameriprise with offices located at Suite 2B, 2610 Gleeson Lane, Louisville, KY 40299.

5. Brian Livingston is the father of Michael Livingston.
6. Brian Livingston's employment with Ameriprise was terminated for cause in January, 2007.
7. Michael Livingston's employment with Ameriprise was terminated for cause in October, 2008.
8. Ameriprise is a member of the Financial Industry Regulatory Authority, Inc. ("FINRA"), and has approximately 3,600 branch offices and 12,000 registered representatives, referred to as "Financial Advisors". Ameriprise conducts business in all 50 states, including Kentucky, and is registered with the Kentucky Secretary of State to do business in the Commonwealth of Kentucky. Its registered agent for service of process in Kentucky is CT Corporation System, 4169 Westport Road, Louisville, Kentucky 40207.
9. Brian Livingston was first employed with Ameriprise on May 11, 1984. From that time until his termination on January 11, 2007, Brian Livingston was a registered representative and franchisee of Ameriprise working from his own satellite branch office in Louisville, Kentucky. At the time of his termination, Brian Livingston had approximately 300 to 400 financial advisory clients including, for purposes of this Agreement, Client A, Client B, Client C, Client D, Client E, Client F, Client G, Client H and Client I (collectively, the "Livingston Clients").
10. According to Brian Livingston's CRD Report, significant customer complaints were lodged against him during the time that he was a Registered Representative and franchisee with Ameriprise. Those complaints included allegations that Brian Livingston made inappropriate and unsuitable investments, opened a margin account, recommended that a client refinance her home and use the equity to purchase securities, and made unsuitable investment

recommendations. Ameriprise settled these complaints for \$450,000 and another for over \$725,000. In one of the complaints, the misconduct alleged (specifically: opening a margin account without the client's knowledge or consent) dates back to 2002. Documents produced by Ameriprise during the course of this investigation also included a customer complaint alleging that Brian Livingston engaged in unauthorized discretionary trading, which was one of the factors that ultimately led to his termination.

11. After his termination from Ameriprise in January, 2007, Brian Livingston entered into an agreement to sell his Ameriprise franchise, and Ameriprise permitted him to sell the franchise to his son, Michael Livingston. Michael became associated with his father's Ameriprise branch office in January, 1993. He became a licensed Registered Representative for Ameriprise in June, 1996.

12. Unbeknown to Ameriprise, following the termination of his employment relationship with Ameriprise, Brian Livingston continued to provide investment advisory services, in his own name and also doing business as BWL Consulting (an unregistered entity), to approximately 31 clients and collected advisory fees from them for those services for a period of approximately one year and nine months.

13. In July 2009, Brian Livingston and the DFI entered into a settlement agreement and order pursuant to which Brian Livingston was barred from the securities industry in Kentucky for a minimum of five years and ordered to make full restitution for all investment advisory service fees charged and collected from clients after January 11, 2007 in an amount estimated at not less than One Hundred Twenty Thousand Eight Hundred Seventy Seven Dollars and no Cents (\$120,877.00)

#### ALLEGATIONS AND FACTUAL FINDINGS

### **Information Revealed by DFI's Investigation**

During the course of its investigation, the Division gathered information and took sworn statements. Based on that investigation, the following facts are alleged:

1. Ameriprise did not conduct a supplemental review of Brian Livingston's accounts upon his termination.
2. Although Ameriprise did not contact in writing Brian Livingston's clients to advise them of his termination Ameriprise did contact Brian Livingston's clients by telephone in early 2007 to advise them that Brian Livingston was no longer with Ameriprise, and ask if they had any objections to Michael Livingston serving as their Ameriprise representative. There is no evidence, however, that Ameriprise made any specific inquiries as to whether the clients had any compliance concerns with Brian Livingston, or that it provided clients with any explanation regarding the details or reasons for Brian Livingston's departure from the firm.
3. In early 2007, in violation of Ameriprise policy and of the securities laws Brian Livingston began contacting his former Ameriprise clients, informing them that he would continue to act as their financial adviser, that nothing was changing other than the fact that his son, Michael, would officially be named as their adviser on their Ameriprise account statements. He told clients that he, Brian, would still be handling their accounts, however, and that he would be billing them directly for investment advisory services. In some instances, checks for payment of Brian Livingston's advisory services invoices were written directly off of the client's Ameriprise account.
4. In September, 2008, the Division received a customer complaint about Brian Livingston acting as an unlicensed investment adviser, doing business as BWL Consulting. In response to that complaint, the DFI initiated an investigation into the matter and determined that

Mr. Livingston was in fact acting as an unlicensed investment adviser. The Commissioner of the DFI then issued a Cease and Desist Order, and DFI attempted to conduct an unscheduled examination at Michael Livingston's Ameriprise office on or about September 30, 2008. However, when it arrived at the office, it learned that Ameriprise, acting independently, had already seized Mr. Livingston's computers and other records and was conducting its own internal investigation of the office. It was also subsequently advised by Ameriprise representatives that Ameriprise was in the process of reviewing all of Brian and Michael Livingston's Ameriprise client files. DFI was also subsequently advised that Michael Livingston had been terminated as a Registered Representative of Ameriprise on October 16, 2008 "for violating company policy including the commingling of client assets in his personal account and sharing compensation with an unregistered person."

5. By letter dated October 31, 2008, DFI requested that Ameriprise produce certain client files which it had obtained from the Livingston office. DFI also requested information about all Livingston clients on margin or with margin capability as of October 31, 2008. Ameriprise produced numerous documents in response to DFI's request on various dates in 2009. DFI's review of those documents, together with its interviews with and documentation provided with respect to the Livingston clients, indicates the following:

- a) In a number of instances, Brian Livingston, while still a Registered Representative and franchisee of Ameriprise, persuaded and convinced clients to mortgage their homes (upon which they had little or no debt) and give him those additional funds to invest in securities through brokerage accounts at Ameriprise. Among the clients whom Livingston persuaded to mortgage their homes for the purpose of investing that money with Ameriprise were Clients A, B, C and D. In some of these

instances as well, Livingston used those funds to open margin accounts in his or the clients' names. There is evidence in the client files and correspondence relating to mortgages.

- b) In many instances, Brian Livingston placed his clients (including those identified herein) in margin accounts without their knowledge or consent and engaged in discretionary trading without proper authorization. When clients questioned Brian and/or Michael Livingston about the margin liability appearing on their monthly account statements they were, in some instances, furnished untruthful, misleading and deceptive responses. One client was told by Michael Livingston that it was a brokerage account that goes up and down. Another client was told it was the surrender cost should the client sell his annuity.
- c) Margin capabilities were unsuitable for many of these clients based upon their financial data and risk tolerances.
- d) Some of these margin accounts were established based on outdated suitability information maintained by Brian and/or Michael Livingston.
- e) Some of the margin trades in these accounts were inconsistent with the reasonable expectations that the clients had the financial ability to meet such a commitment. A number of clients placed on margin by Brian and/or Michael Livingston were unsophisticated investors of modest income and limited assets.
- f) While some of these clients were unaware of the fact that they were on margin, Ameriprise and the Livingstons received benefits from the margin trading and debit balances including interest and commissions. In addition, where proceeds from mortgages were used to increase account balances for purposes of trading on margin,

Ameriprise and the Livingstons also benefited through increased commissions and margin interest. Ameriprise is estimated to have received \$258,353 in margin interest and commissions from clients A – I.

- g) Client signatures for certain Livingston Clients were forged in a number of instances. When compared to the client's actual signatures on other documents in the client files maintained by Brian and/or Michael Livingston, the forgeries are obvious.
- h) Proper supervision of the Livingstons based on exceptions appearing in the field margin reports should have detected irregularities in the margin arrangements for certain Livingston Clients.
- i) Ameriprise's brokerage account forms afford a client the ability to add a margin feature to his or her account by merely checking a box on the form without a separate initial or signature, but Ameriprise sends to each client who has signed up for margin loan access a confirmation which includes a description of a margin loan and that such loans involve risk. j) NASD Rule 2341 requires that a margin disclosure statement be given to all customers when the margin account is opened. As of June 4, 2001, Ameriprise advisors were required to deliver a Risk Disclosure form to a client at the time the client established margin access. The client signature on the Brokerage Application or the Additional Accounts/Features Form did not include language to confirm the receipt of the Margin Risk Disclosure Form until 2007. For each of the 9 accounts at issue in this Complaint, only Client I's forms contain the language. There is no evidence in the client files for the other 8 clients that this document was delivered as required by Ameriprise policy.

k) Ameriprise field margin reports for the period of January 1, 2006 to October 20, 2008 generated in excess of 300 exceptions. The reports appear to be generated by one of the following: activity amount, number of transactions, percentage of equity, and risk tolerance. There is no indication from the documentation furnished by Ameriprise that the Registered Principal responsible for supervising the Livingstons reviewed the exceptions on these reports that related to the 9 clients referenced in this Complaint as was required by Ameriprise policy.

**Instances of Failure Of Supervision Disclosed By DFI's Investigation**

6. It is the position of the DFI, from its review of the documents provided by Ameriprise, together with its interviews with and documentation provided with respect to the Livingston Clients, that there was a failure of Ameriprise to adequately supervise the Livingstons as follows:

a) With respect to the Livingston Clients, there was a general failure by Ameriprise to adequately review and approve transactions on margin and the establishment of margin accounts, as well as to conduct periodic margin account reviews sufficient to detect irregularities and abuses. This failure occurred despite the fact that a customer complaint was filed against Ameriprise by a client of Brian Livingston's alleging that he opened a margin account without the client's knowledge or consent in 2002. Ameriprise settled that action for \$450,000 in 2002. 8 of the 9 clients referenced in this Complaint had their margin account forms signed after 2002. Another customer complaint against Brian Livingston alleging unsuitable investments and margin was filed in 2005. Ameriprise settled that claim for \$728,700 as well. Ameriprise had notice of the possibility of problems with Brian Livingston's clients' margin accounts.



- b) The forgeries of client signatures for certain Livingston Clients were obvious and should have been recognized upon review. Ameriprise has produced emails dating from March, 2006 sent by Registered Principal, Kathy Larlee, to another representative at Ameriprise requesting feedback regarding an issue about the authenticity of Client B's signature on a document. On October 12, 2006, Ameriprise reviewed the account file of Client A did not identify evidence of forgery. Upon review of the same file by DFI, evidence of forged documents was discovered, and Client A has since indicated to DFI and Ameriprise that his/her signature was forged on the margin new account form. On August 22, 2007 Ameriprise reviewed the account file of Client F did not identify evidence of forgery. Upon review of the same file by DFI, evidence of forged documents was discovered, and Client F has since indicated to DFI and Ameriprise that his/her signature was forged.
- c) Documents provided by Ameriprise show that Ameriprise Client D's file was reviewed on October 12, 2006. The reason this file was reviewed was due to a "client complaint." The claim was that Brian Livingston had engaged in discretionary trading in the client's account without authorization to do so. The documents also reflect that Brian Livingston admitted that he should not have bought the funds without talking to the client, which was one of the factors that ultimately led to his termination.
- d) Given that allegations of improper margin trading, discretionary trading and document forgery by Brian Livingston had previously been made known to Ameriprise, Ameriprise should have performed a supplemental review of Brian Livingston's client account files upon his termination.

- e) Correspondence and other documents located in the Livingstons' client files contained evidence of questionable commentary by Brian Livingston to his clients, including untrue statements and omissions of material fact.
- f) Interviews with the Livingston Clients indicate that certain clients did not receive copies of any forms or documents which they signed with Brian Livingston.
- g) Assist Daily Exception Reports (noting account irregularities or questionable transactions) provided to DFI by Ameriprise contain over 100 pages of exceptions for Brian Livingston during a six month period in 2006 compared to less than 20 pages of exceptions for Michael Livingston. These numbers are excessive and should have indicated to Ameriprise the need for review and heightened supervision of Brian Livingston.
- h) Brian Livingston entered suitability information on the Ameriprise computer system that contradicted the suitability information he had obtained from clients on their paper suitability forms.
- i) Ameriprise permitted Michael Livingston to purchase his father's Ameriprise franchise without placing Michael Livingston on heightened supervision in spite of the fact that it had just terminated Brian Livingston for cause and had already received numerous customer complaints.
- j) No evidence was produced by Ameriprise that the firm conducted a comprehensive review of the account files of Brian Livingston immediately following his termination for cause in January, 2007.
- k) Brian Livingston persuaded and convinced numerous clients to mortgage their homes (upon which they had little or no debt) and give him those additional funds to

invest in securities through brokerage accounts at Ameriprise in violation of Ameriprise policy. The client files and correspondence evidence these efforts and should have been detected and discovered upon a proper review. Brian Livingston's efforts to persuade clients to mortgage their homes for the purpose of investing with Ameriprise persisted over a number of years and appears to date back to at least 2002.

l) Ameriprise's compliance manual prohibits registered representatives from arranging loans on behalf of customers for the purpose of using the loan proceeds to purchase securities or life insurance products. Specifically, the Compliance Manual provides:

#### **Prohibited Activities**

##### **Arranging for Credit**

Although ordinarily you may assist clients in finding a suitable bank, you may not assist them in obtaining a loan if the purpose of the loan is to purchase, carry or trade securities or life insurance products. (The definition of securities, includes not only stocks and bonds but also such investments as mutual funds, limited partnerships, face amount certificates and variable annuities.) Arranging or helping to arrange for credit under such circumstances is a violation of company policy. In addition, you may never accept a finder's fee from a lender or borrower.

m) Client interviews conducted by DFI indicate that Michael Livingston had little or no contact with the Livingston Clients referred to in this Complaint (either orally or in writing) after obtaining his father's franchise. Ameriprise should have detected and discovered this upon proper supervision.

n) There is evidence in the files which indicates that Brian Livingston had borrowed money from a client. Ameriprise failed to detect that Brian Livingston had borrowed money from clients.

o) After Brian Livingston was terminated and Ameriprise allowed Michael Livingston to acquire the franchise, Michael allowed Brian to access confidential Ameriprise information on the system, and there is evidence of fee splitting. The Livingstons were the lessees of the office space in the building where these Ameriprise operations were located. Accordingly, Brian had access to all equipment, files and documents maintained in that office. Michael allowed Brian to access confidential Ameriprise information and continue operating out of Ameriprise's office after January, 2007. This should have been detected upon proper supervision and did not cease until Ameriprise placed a Registered Principal in closer geographical proximity to that office in 2008.

p) Upon inspection, Ameriprise reviewed only 10 customer accounts of Brian Livingston. In comparison to the total number of customer accounts, in light of the seriousness of the allegations in prior customer complaints and the fact that Brian Livingston had been placed on heightened supervision prior to his termination, the number of client files inspected was inadequate under the circumstances.

#### **Statement of Alleged Violations**

20. It is the position of the DFI that through the above conduct, Ameriprise is in violation of KRS 292.330(13)(a)7 for (1) dishonest or unethical practices; and (2) KRS 292.330(13)(a)9a and 808 KAR 10:030 Section 2 for failure to supervise. In addition, its agents Brian and Michael Livingston, were in violation of (1) 808 KAR 10:030 Section 1 for placing clients in unsuitable investments based upon their investment objectives, financial situation and needs; (2) 808 KAR 10:040 Section 2(5)(a) and (b) for inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the

account; (3) 808 KAR 10:030 Section 1 for recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer; (4) 808 KAR 10:040 Section 2(8) for making a false, misleading, deceptive or exaggerated representation or prediction in the solicitation or sale of a security; (5) 808 KAR 10:040 Section 2(3)(a) for executing a transaction on behalf of a customer without authorization to do so; (6) 808 KAR 10:040 Section 2(3)(b) for exercising discretionary power without first obtaining written discretionary authority from the customer; (7) 808 KAR 10:040 Section 2(8)(c) for making false, misleading, deceptive, exaggerated or flamboyant representations or predictions in the solicitation or sale of a security, including that it will result in an assured, immediate or extensive increase in value, future market price, or return on an investment; (8) 808 KAR 040 Section 4(8) for guaranteeing a customer that the advice provided by the advisor will achieve a specific result; (9) 808 KAR 10:040 Section 3(3) and Section 4(3) for borrowing money from a customer; (10) 808 KAR 10:440 Section 1(20) for executing transactions in margin accounts without securing from the customer a properly executed written margin agreement; for (11) 808 KAR 10:440 Section 1 (30) for committing acts involving customers, customer accounts, or any business records (12) KRS 292.320(1)(a) for employing any device, scheme, or artifice to defraud in connection with the offer, sale, or purchase of any security; (13) KRS 292.320(1)(b) for making untrue statements of material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; and (14) KRS 292.320(1)(c) for

engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

### **Statutory Remedies**

21. Pursuant to KRS 292.470 and KRS 292.500(14), the Commissioner may levy a civil penalty against any person who violates any provision of or any administrative regulation promulgated under KRS Chapter 292 or order issued by the Commissioner under KRS Chapter 292. The Commissioner may also, pursuant to KRS 292.500(15), assess the costs of any investigation, including attorney's fees incurred as a result of bringing an enforcement actions under the provisions of KRS Chapter 292 and costs of holding any hearing as a result of an enforcement action upon a final determination that a violation has occurred, and in an amount reasonably related to the costs of investigation and enforcement for those violations only. Pursuant to KRS 292.470, the Commissioner may also direct the Respondent to perform any other reasonable mandates pursuant to an appropriate remedy fashioned by the Commissioner and reasonably calculated to carry out the provisions of the Kentucky Securities Act. Such reasonable mandate may include an order of rescission, restitution, or disgorgement.

### **AGREEMENT AND ORDER**

Without admitting or denying any of the claims or allegations set forth herein, Ameriprise has indicated that it is willing to compromise and settle this matter, and all claims arising from or relating thereto, in accordance with the terms set forth herein.

The DFI and Ameriprise, in the interest of economically and efficiently resolving the issues raised in the foregoing Background and Factual Findings, agree as follows:

1. This Order concludes the investigation by the Department and any other action that the Department could commence against Ameriprise under applicable Kentucky law on behalf of Kentucky as it

relates to the firm's supervision of Brian Livingston and Michael Livingston

2. This Order is entered into solely for the purpose of resolving the referenced state investigation, and is not intended to be used for any other purpose.

3. Ameriprise will CEASE AND DESIST from violating the Kentucky Securities Act (KRS Chapter 292) and will comply with the Kentucky Securities Act (KRS Chapter 292).

4. Within ten days after the entry of this Order, Ameriprise shall pay the sum of Three Hundred Thousand Dollars (\$300,000) to the Kentucky State Treasurer. Payment shall be delivered to the Department of Financial Institutions, ATTN: William Owsley, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601.

5. Within ten days after the entry of this Order, Ameriprise shall make a voluntary contribution of One Hundred Thousand Dollars (\$100,000) to Kentucky's state account with the Investor Protection Trust. Payment shall be directed to IPT, Attn: Don Blandin, Suite 300, 919 Eighteenth Street NW, Washington, D.C. 20006-5517 with a copy of the payment being simultaneously sent to the Department of Financial Institutions, ATTN: William Owsley, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601.

6. Within ten days after the entry of this Order, Ameriprise shall reimburse the DFI Fifty Thousand Dollars (\$50,000) for its costs of investigation in this matter. Payment shall be delivered to the Department of Financial Institutions, ATTN: William Owsley, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601.

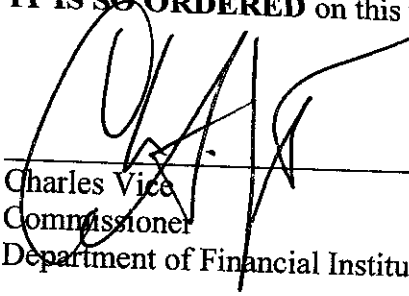
7. Within ten days after the entry of this Order, Ameriprise shall contact the nine Livingston Clients (Clients A-I) and make written offers of restitution in the total amount of \$533,984 and as more specifically described on the attached appendix. Copies of the offers and all written responses shall be furnished to the DFI at the above address. Upon acceptance of the offer by the investor, payment shall be made within 15 days of acceptance. Copies of the payments shall be furnished to the DFI at the above address. If any of Clients A-I reject the settlement offers set forth herein, Ameriprise shall pay the

rejected specified amounts (as set forth in the attached appendix) into an escrow account set up by the DFI for the sole purpose of distributing said amounts to Clients A-I as contribution and set-off towards any later settlement, judgment or award in their favor involving actions by Brian or Michael Livingston. Payment by Ameriprise into the escrow account shall be made within 15 days of receipt of notice of rejection. Copies of any written rejections shall be furnished to the DFI at the above address. The DFI agrees to make payment of said specified amount within 15 days of receiving notice of any such later settlement, judgment or award in favor of any Client A-I. To the extent that there is not any settlement, judgment or award in favor of a Client A-I who has rejected the restitution offer set forth herein, the DFI is entitled to retain the specified restitution amounts that were offered but rejected by any of Clients A-I.

8. In regard to this matter, Ameriprise waives its right to demand a hearing, at which Ameriprise would be entitled to legal representation, to confront and cross examine witnesses for the DFI and to present evidence on its own behalf. Further, Ameriprise consents to and acknowledges the jurisdiction of the DFI over this matter and that this Agreement is a matter of public record and may be disseminated as such. In consideration of execution of this Settlement Agreement and Order, Ameriprise for itself, and for its successors and assigns, hereby releases and forever discharges the Commonwealth of Kentucky, DFI, Office of Legal Services, and each of their members, agents, and employees in their individual capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and unknown, in law or equity, that Ameriprise ever had, now has, may have or claim to have against any or all of the persons or entities named in this paragraph arising out of or by reason of this investigation, this enforcement action, this settlement or its administration.




IT IS SO ORDERED on this the 27<sup>th</sup> day of October, 2009.

  
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Charles Vice  
Commissioner  
Department of Financial Institutions

Consented To:

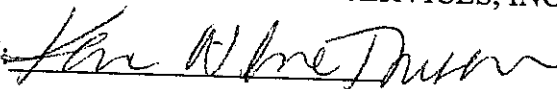
This 23 day of October, 2009

  
\_\_\_\_\_  
Shonita Bossier  
Director  
Division of Securities  
Kentucky Office of Financial Institutions

AND

This 22 day of October, 2009

AMERIPRISE FINANCIAL SERVICES, INC.

BY: 

ITS: Assistant General Counsel

**Appendix to October 2009 Settlement Agreement and Order between  
Ameriprise Financial Services, Inc. and The Commonwealth of Kentucky**

	\$25,021
	\$18,583
	\$7,765
	\$46,505
	\$42,255
	\$14,498
	\$70,999
	\$274,177
	\$34,181

**Restitution Total:   \$533,984**